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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re D.C., a Person Coming Under  
the Juvenile Court Law.

CONTRA COSTA COUNTY  
CHILDREN AND FAMILY  
SERVICES BUREAU,

Plaintiff and Respondent,

v.

K.A.,

Defendant and Appellant.

A158456

(Contra Costa County  
Super. Ct. No. J18-00651)

K.A. (mother) appeals from the juvenile court's order denying her Welfare and Institutions Code<sup>1</sup> section 388 petition and terminating her parental rights. She raises no argument challenging the termination of her parental rights, but contends that the court abused its discretion in denying her section 388 petition, which requested modification of the dispositional order that bypassed her for reunification services under section 361.5, subdivisions (b)(10) and (b)(11). We find no error and, therefore, we shall affirm.

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<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

## **Background**

Mother has had a total of six children, including the youngest (D.C.) who is the subject of the instant proceeding. Mother's parental rights with respect to the five older children were terminated as a result of her substance abuse and the domestic violence between her and the fathers of these children, one of whom is D.C.'s father.

In May 2018, while pregnant with D.C., mother tested positive for methamphetamine following an incident of domestic violence that resulted in her hospitalization. D.C. was born in June 2018. Within days of his birth, the Contra Costa County Children And Family Services Bureau (bureau) filed a petition alleging that D.C. was at substantial risk of harm due to mother's history of substance abuse and domestic violence with the child's alleged father. The child was detained and placed in a foster home. The court found the allegations of the petition true at a jurisdictional hearing in September 2018.

Due to issues involving the Indian Child Welfare Act (25 U.S.C. § 1902) compliance, the dispositional hearing was not completed until March 2019. The record established that between June 2018 and March 2019, mother had obtained a restraining order against D.C.'s father, graduated from a residential treatment center and began out-patient treatment. The record also showed that, in that time period, mother had not tested positive for methamphetamine usage and had consistently attended her scheduled supervised visitation with D.C. Nonetheless, the court bypassed mother for reunification services under section 361.5, subdivisions (b)(10) and (b)(11) based on a finding that mother had not made a reasonable effort to treat the

problems that led to the termination of her parental rights with respect to her other children.<sup>2</sup> A permanency planning hearing was set for July 2019.

In advance of the section 366.26 hearing, the bureau submitted a report recommending termination of parental rights. The report stated that D.C. had been placed in his prospective adoptive foster home three days after his birth and that the family was prepared to adopt. The report explained further that the bureau had explored placement with D.C.'s maternal grandmother as discussed at the disposition hearing, but that the grandmother withdrew her request because she supports D.C. staying with his caregivers and their children.

Shortly before the July hearing, mother filed a section 388 petition requesting that the court modify its dispositional order to provide reunification services for her. Her petition alleged that she had participated in a variety of services including substance abuse treatment and domestic violence classes and that it would be in D.C.'s best interest to have contact with his five siblings, who had been adopted by her brother, as well as to be raised by his biological mother.

At a combined section 366.26 and 388 hearing, the court denied the section 388 petition. The court explained, "This is a very hard case because

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<sup>2</sup> Mother did not contest the bureau's recommendation to bypass services at the disposition hearing. At the hearing, mother's counsel stated, "So my client is doing remarkably well. In fact, she's looking better today than I've seen her in quite some time. She is out of the shelter and in her own apartment that she's currently sharing with somebody else, but she just found out that she qualified for the Fresno low-income housing, so she's going to be moving to Fresno, which will be closer to her other children. So she's doing very well. She's submitting. She understands that her child -- her parental rights will be terminated and that her child will be adopted. The plan is for the child to go live with maternal grandmother, and she is in full support of that."

Mother has worked very, very hard. I think she's made progress that probably even surprises her given her history. She should be really proud of herself. [¶] But . . . we have a long, long history of drug abuse and of domestic violence. And Mother has had a period as long as three years of sobriety and then relapsed. So in Mother's own experience, a year and three months and 31 days may not be enough. [¶] She also -- although I understand she has had some medical challenges and real tests, she also has not been in a relationship with anybody, and often those relationships are what get her back into drugs. And it's great that she hasn't been in a relationship with anyone, and I'm happy about that for her, but she's not been tested in the ways that have led her to go back to using again. Relationships stresses, she hasn't had parenting stresses. [¶] And I have real concerns that Mother is not -- she is minimizing her own history, and not acknowledging all of the reasons that the prior five children were taken away. It wasn't just because she didn't have housing. It was because she was using. It was that she was subjecting herself and potentially the children to domestic violence. And I asked Mother specifically, what she has learned in domestic violence classes? And all she was able to say is that you don't deserve to be hit. But nothing about the cycle of violence, and nothing about insight into her own patterns that put her at risk in the next relationship. And she hasn't had a relationship that's a healthy relationship after getting any tools in domestic violence classes. [¶] So I see this as a case of Mother changing, but not changed in the fundamental ways that she needs to change in terms of her patterns, but particularly her insight into the ways that the reasons she has relapsed, she's blamed a lot of circumstances on her relapse rather than looking in her own choices, her own behavior. [¶] And I'm very troubled by her being influenced by the father's sister, on whom she was dependent for

rides, and induced to start the process of seeking the lifting of the restraining order, which was the first thing she had ever done to protect herself from domestic violence. And it hadn't been in place for even a year and already she was lifting it, not for her, but for him, out of feeling guilty. Well, that is not understanding the cycle of violence, that is not understanding where the responsibility for violence lies. And I don't see that Mother understands any of those things and has the insight to protect herself and, therefore, to protect [D.C.] from the risks of domestic violence. [¶] Mother has had five children taken away. She has achieved sobriety now, which is great, for a significant period of time. And I did not see her when she was very impaired, but she's clearly looking like she's healthy and taking care of her own emotional and spiritual physical health, and all that is great. But I'm not finding that there are changed circumstances, but changing circumstances, especially when it comes to understanding and protecting herself against domestic violence. [¶] Then there's the issue of [D.C.'s] best interests. And [he] does not know her as a mother. And he's entitled -- he needs stability. And to hold off his stability for six more months so Mother, who has fought her own demons successfully and then not, over the course of the lives of his five prior siblings, is just not in [his] best interest to wait for her until we're really sure that all of this is taken. [¶] So for those reasons, . . . I do not find a change in circumstance that would warrant the granting of the remedy she requests, which is additional services, and I'm going to deny that request."

Thereafter, the court terminated mother's parental rights. Mother timely filed a notice of appeal.

### **Discussion**

Section 388, subdivision (a)(1) allows a parent to petition the court to change or set aside any previous order in the same dependency action. The

petition must set forth a concise statement of the new evidence or changed circumstances that require changing the order. (*Ibid.*) The court may summarily deny a petition under section 388, subdivision (a) if the petition “fails to state a change of circumstance or new evidence that may require a change of order . . . or fails to show that the requested modification would promote the best interest of the child.” (Cal. Rules of Court, rule 5.570(d)(1); *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526 & fn. 5.) Section 388 provides an “escape mechanism” that allows the court to consider new information before the permanency planning hearing. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309.) The procedure accommodates “the possibility that circumstances may change after the reunification period that may justify a change in a prior reunification order.” (*Ibid.*) “We review the juvenile court’s summary denial of a section 388 petition for abuse of discretion.” (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

Here, mother’s petition established that between the entry of the dispositional order in March and the filing of the petition in July, mother continued to make progress addressing the substance abuse and domestic violence issues that led to the termination of her parental rights with respect to D.C.’s older siblings and that supported the court’s order bypassing services. According to her petition, she began attending another substance abuse program at a local church in May 2019, and in June 2019 she resumed regular drug testing. She continued in individual counseling and began participating in a domestic violence prevention program in May 2019. Finally she obtained stable housing and completed a 10-week parenting class. While the court acknowledged her continued progress, the court noted that she had not completed all the work that needed to be done before reunification could

be considered. The court reasonably characterized mother's circumstances as "changing, but not changed."

The court also found that initiating reunification services for mother would not be in the child's best interests. When a section 388 petition is filed on the eve of the section 366.26 hearing, the needs of the child for permanency and stability are paramount. (*In re J.C.* (2014) 226 Cal.App.4th 503, 526; *In re Stephanie M.* (1994) 7 Cal.4th 295, 317 [after the termination of reunification services, " 'the focus shifts to the needs of the child for permanency and stability' " and a court "hearing a motion for change of placement at this stage of the proceedings must recognize this shift of focus in determining the ultimate question before it, that is, the best interest of the child"].) The record established that the child had spent his entire life with a family that wanted to adopt him. Even the maternal grandmother who was once being considered as a placement agreed that adoption by the current foster family was in the child's best interest. Although mother clearly loved her son and visited as often as was permitted, the court reasonably found that the relationship formed during their limited supervised visitation was not a parental relationship such that it warranted delaying D.C.'s adoption.

Mother's reliance on *In re I.B.* (2020) 53 Cal.App.5th 133, 154 is misplaced. In that case, the trial court granted the mother's section 388 petition at a combined section 388/366.26 hearing and the trial court affirmed the order. (*Id.* at pp. 141, 164.) The appellate court rejected the argument by the social services agency that the court had abused its discretion. The court found that substantial evidence supported the court's finding that mother had remedied the domestic violence issues that led to the child's removal from her care and that the modification requested was in the child's best interest. (*Id.* at pp. 155-156, 161-162.) As relevant here, *I.B.* did not involve

substance abuse and the history of domestic violence was not similar to mother's history here. More significantly, the mother in *I.B.* had a more significant parental relationship with the child and the child's potential placements were problematic. (*Id.* at p. 160 ["If our analysis were to stop here, it would be difficult to say Mother rebutted the presumption that adoption by the foster family was not in his best interests. What tipped the scales, and was discussed at length at the hearing, was that both potential placements had disadvantages."].) In contrast, by all accounts adoption by the current caregivers will provide D.C. with the stability that is in his best interest.

Accordingly, the court did not abuse its discretion in denying mother's section 388 petition.

### **Disposition**

The order denying mother's section 388 petition and terminating parental rights is affirmed.

POLLAK, P. J.

WE CONCUR:

STREETER, J.  
TUCHER, J.